IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

GRACE UWADIALE, Appellant, v. BEHAVIORAL HEALTH RESOURCES, a non-profit corporation, Respondent.	No. 33785-1-II UNPUBLISHED OPINION

BRIDGEWATER, J. — Grace Uwadiale appeals an order requiring her to pay sanctions as a condition for continuing her wrongful discrimination trial. We affirm.

On February 20, 2004, Uwadiale sued Behavioral Health Resources (BHS) alleging, among other claims, wrongful discharge and national origin discrimination. On July 26, 2004, Judge Rosanne Buckner set the trial for August 2, 2005. Both parties conducted discovery and

took depositions.

According to Uwadiale, Kevin Johnson, her attorney, told her on July 27, 2005, that the case was ready. But on August 1, Johnson told her that he was not prepared to try the case. She denies that she had any prior warning or contributed in any way to her attorney being unprepared. She fired Johnson after he suggested that she voluntarily dismiss and refile her claim. On August 2, the day the trial was scheduled to begin, Johnson notified BHS that Uwadiale had terminated him.

Judge Sergio Armijo called the trial on August 4, 2005. At that time, Johnson notified the court that Uwadiale had terminated his services. Johnson explained that he had not filed a motion to withdraw because Uwadiale had not yet found substitute counsel. Johnson told the trial court that the case was not ready because his relationship with Uwadiale had deteriorated. Uwadiale, acting pro se, then requested a continuance in order to get substitute counsel.

In a written response, BHS opposed Uwadiale's motion and, in the alternative, requested terms on the continuance. BHS also orally opposed the continuance and asked for costs. BHS estimated that it would take 80 to 120 hours for its attorneys to prepare the case for trial on a later date.

The trial court decided to grant the continuance but, based on BHS's time estimate and BHS's counsel's discounted hourly fees, ordered Uwadiale to pay $16,800 as a condition for continuing the trial. Uwadiale, appearing pro se, appealed the trial court's order imposing terms.

BHS moved to strike Uwadiale's brief for failing to comply with the Rules of Appellate Procedure (RAP). We note that Uwadiale's brief does not conform to the requirements of RAP

10.4(a)(1), and her citation to the record and to legal authority is sparse at best. Pro se litigants are required to comply with the RAP. *State Farm Mut. Auto. Ins. Co. v. Avery*, 114 Wn. App. 299, 310, 57 P.3d 300 (2002). But RAP 10.7 grants us discretion to address issues even if they are inadequately briefed. *Avery*, 114 Wn. App. at 310. Although Uwadiale's brief is difficult to follow, includes many unnecessary facts, and uses improper legal citation format, she adequately describes the grounds for her appeal. We will, therefore, accept her brief and address her appeal.

Uwadiale first argues that the trial court should not have considered BHS's written request for terms on the continuance because BHS did not provide her with a copy before the hearing. But, as BHS points out, it was Uwadiale's motion for a continuance, not BHS's. BHS had a right to oppose the motion for a continuance both in writing and orally. We will not punish BHS for anticipating Uwadiale's motion and preparing a written response.

Once Uwadiale moved for a continuance, the trial court had authority to consider imposing terms. CR 40(d) provides that when a case is set and called for trial, the court may, "upon terms," reset the trial. CR 40(d). The Washington Supreme Court has interpreted CR 40(d) to vest the trial court with the power to impose terms as a condition of granting a continuance. *State v. Ralph Williams' NW Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 303, 553 P.2d 423 (1976), *appeal dismissed*, 430 U.S. 952 (1977). Pierce County Local Rules (PCLR) confirm that if a party moves for a continuance after the deadline to adjust the trial date, "[a] continuance may be granted subject to such conditions as justice requires." PCLR 40(g)(2)(B).

Because we deem litigants to be aware of the court rules, Uwadiale cannot claim surprise when BHS urged the court to exercise its discretion to impose costs as a condition of a

continuance. Moreover, Uwadiale received actual notice before the hearing that BHS was going to be asking for costs. On August 3, the day before the trial was called, BHS warned Uwadiale in an e-mail that it had incurred significant expenses preparing for trial and was going to be asking for an award of costs. CP 45-46.

Even if BHS should have given notice of its written motion for costs, the error is harmless. Nothing in CR 40(d) requires a motion for terms to be in writing. Here, BHS also orally requested terms, duplicating its written motion. And Uwadiale did not request additional time to respond to BHS's written motion. The issue was, therefore, properly before the trial court, and Uwadiale suffered no prejudice.

Uwadiale next argues that the trial court abused its discretion by imposing terms because she was blameless for the delay; she asserts it was her attorney's fault. BHS responds that the trial court acted reasonably in imposing terms whether or not Uwadiale was personally responsible because BHS had already prepared for trial and it was ready to proceed. We agree.

We review a trial court's decision to impose costs as a condition for a continuance under CR 40 for abuse of discretion. *Williams*, 87 Wn.2d at 303-04 (citing *Peterson v. David*, 69 Wn.2d 566, 569, 419 P.2d 138 (1966)). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds. *Thompson v. King Feed & Nutrition, Serv., Inc.*, 153 Wn.2d 447, 460, 105 P.3d 378 (2005). A discretionary decision is based on untenable grounds when the trial court relies on unsupported facts or applies the wrong legal standard. *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003).

When a party moves for a continuance on the first day of trial, especially where the party

has fired her counsel and is not ready for trial, the trial court is within its discretion to impose terms on an order allowing a continuance. Even if her attorney was the cause of the delay, Uwadiale is ultimately responsible for being ready for trial. By deciding to fire her attorney three days before trial, Uwadiale created the situation leading to her request for a continuance. And, as BHS had already expended significant resources preparing for the trial and will incur additional costs for a reset trial, requiring Uwadiale to pay for additional expenses the continuance caused was reasonable. The decision was, therefore, within the trial court's discretion.

Moreover, the trial court could have denied the continuance altogether. Uwadiale was not entitled to a continuance merely because she fired her attorney. *Martonik v. Durkan*, 23 Wn. App. 47, 50, 596 P.2d 1054 (1979) (citing *Jankelson v. Cisel*, 3 Wn. App. 139, 141-42, 473 P.2d 202 (1970), *review denied*, 78 Wn.2d 996 (1971)), *review denied*, 93 Wn.2d 1008 (1980). The policy rationale for this rule is that if the court allowed a continuance in this situation as a matter of course, a party could abuse it. *Martonik*, 23 Wn. App. at 50. And here, the facts suggest that Uwadiale used her decision to fire her attorney to compel a continuance in part because she was not ready to proceed to trial. Imposing terms on the continuance was a reasonable response. Uwadiale may still get her day in court; she merely has to pay for the additional cost her delay tactic has caused.

Uwadiale next argues that the trial court abused its discretion by arbitrarily setting the amount of terms. BHS argues that cost estimates provided orally to the trial court were a sufficient basis to support the award and that accepting BHS's estimate was not manifestly unreasonable. We agree.

The trial court must set the term amount within a reasonable relationship to the actual cost of a continuance. *Moe v. Wise*, 97 Wn. App. 950, 970, 989 P.2d 1148 (1999), *review denied*, 140 Wn.2d 1025 (2000). The terms may include nonrecoverable costs and attorney fees. *Moe*, 97 Wn. App. at 970. And the trial court errs if it does not consider the actual cost of a continuance. *Moe*, 97 Wn. App. at 970. The remedy for failure to consider the actual costs is to remand for factual findings. *See Williams*, 87 Wn.2d at 302 (favorably describing the Court of Appeals' decision to remand for factual determination of actual costs).

Here, BHS told the court that it conservatively estimated that because the trial could not be reset until much later, the two trial counsel would have to spend an additional 40 to 60 hours each preparing for trial again. BHS then gave the trial court its attorneys' discounted rates for each attorney. Using the 40-hours-per-attorney estimate and the discounted rates, the total came to $16,800. The court relied on BHS's estimate and awarded that amount. The trial court did not, however, enter any findings of fact.

But the failure to enter findings of fact is not fatal to a CR 40(d) order requiring payment of terms. *Williams*, 87 Wn.2d at 305 n.2 (noting that the trial court is not required to enter findings and conclusions of law). We can determine from the record that BHS's estimate was sufficient to support the trial court's award. At 40 hours per attorney, BHS was essentially requesting a week's worth of time to prepare for litigating a discrimination case. And by their nature, discrimination cases are fairly complex. Taking a week to prepare before a complex trial is reasonable. And BHS's counsel provided their discounted fees rather than their normal fees as a basis for calculating costs, making the estimation even more reasonable. We hold that BHS's

estimation was therefore reasonable and that the trial court properly relied on it.

Uwadiale next contends that BHS was lying about the time it would take to prepare for trial. She provides an e-mail in which BHS warned Uwadiale that they had already incurred $7,000 in costs for depositions, exhibits, and video equipment rental. She suggests that this e-mail shows that BHS inflated its costs in front of the court by asking for $16,800. But this e-mail estimate did not include attorney fees; it only calculated the ancillary costs of litigation. In fact, by not asking for the ancillary costs that would have to be duplicated in addition to attorney fees, BHS understated the actual cost of resetting trial. BHS's estimate of attorney fees was a reasonable basis for determining the amount of terms to award.

Uwadiale also raises a number of other issues that are either not relevant or without merit. For example, she argues at length about the merits of her underlying claim. While Uwadiale obviously feels strongly about her departure from BHS, that issue is not before us. She also argues that the trial court erred in not requiring BHS to follow court guidelines in subsequent proceedings. But we are reviewing the continuance order, not the trial court's later interlocutory rulings. The trial court's subsequent rulings are not relevant here. She next argues that the trial court erred in forcing her to proceed at trial with a sore throat. She does not provide any legal authority to indicate that this was an error nor did she request a continuance on that basis. She next asserts that the trial court erred by not stating clearly that the continuance prejudiced BHS. But the trial court specifically noted that BHS would have to incur additional costs, which is prejudice. Last, citing a Tenth Circuit case, *Ehrenhaus v. Reynolds*, 965 F.2d 916 (10th Cir. 1992), and a federal statute, 28 U.S.C. § 1927, she argues that the trial court erred by failing to

consider lesser sanctions and in not entering a finding of bad faith. But this case does not involve sanctions under a federal statute. And, as discussed above, awarding terms as a condition for a continuance was appropriate in this case.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Bridgewater, J.

We concur:

Houghton, P.J.

Penoyar, J.